

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NICHOLAS F. ROMASCO,)
 Plaintiff,)
)
 v.) C.A. No. 04-11007-MEL
)
UNITED STATES ARMY,)
 Defendant.)

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff's complaint will be dismissed in thirty-five (35) days from the date of this Order, unless plaintiff shows good cause, in writing, before that time as to why this case should not be dismissed.

ALLEGED FACTS

On May 18, 2004, pro se plaintiff Nicholas Romasco filed a handicap discrimination claim against the United States Army. Plaintiff alleges that he is "physically challenged" and uses an electric wheelchair. Complaint pp. 1-2. He states that on May 10, 2004, he attempted to enlist in the United States Army at a recruiting office in Boston, Massachusetts, but that he was not allowed to enlist. Complaint p. 2. Plaintiff appears to claim that the defendant's action constituted illegal discrimination on the basis on handicap. Plaintiff does not cite any specific statute or regulation in support of his claim.

ANALYSIS

I. Plaintiff's Claims Are Subject To Preliminary Screening Pursuant To 28 U.S.C. § 1915

Plaintiff has sought permission to proceed in this action without prepayment of the filing fee. His complaint, therefore, is subject to the screening provisions of 28 U.S.C. § 1915. See 28 U.S.C. § 1915 (proceedings in forma pauperis). Section 1915 authorizes federal courts to dismiss actions in which a plaintiff seeks to proceed without prepayment of fees if the action lacks an arguable basis either in law or in fact, Neitzke v. Williams, 490 U.S. 319, 325 (1989), fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2).

Although pro se complaints must be liberally construed, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), plaintiff's claims in this case are nevertheless subject to dismissal, as discussed more fully below.

II. Plaintiff's Complaint Is Subject To Dismissal As Lacking An Arguable Basis in Law or Fact

In this case, plaintiff's claims are subject to dismissal because they lack an arguable basis in law or fact. To the extent that plaintiff intends to assert a claim under Title I of the Americans with Disability Act ("ADA"), which prohibits

discrimination on the basis of handicap in employment, the complaint fails to state any arguable claim under that Act because the federal government and its agencies, including the uniformed military services, are not generally subject to the provisions of the ADA. See 42 U.S.C. § 12112 (prohibiting discrimination on the basis of disability by covered entities) and 42 U.S.C. § 12111(5)(B) (defining "covered entities" and specifically excluding the United States from coverage under the ADA); Coffman v. State of Michigan, 120 F.3d 57, 59 (1997)(ADA does not provide remedy for discrimination based on disability to uniformed member of armed forces who claimed that he was discriminated against by branch of military). Accordingly, to the extent that plaintiff intends to assert a claim under the ADA, that claim is subject to dismissal.

Further, to the extent that plaintiff intends to assert a claim for discrimination in employment on the basis of disability under § 504 of the Rehabilitation Act, 29 U.S.C. § 794¹, any such claim must also fail because uniformed military personnel, or applicants to become uniformed military

¹ 29 U.S.C. § 794(a) states that "no otherwise qualified individual with a disability...shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service".

personnel, do not have a cause of action against the federal government under that section. See e.g., *Golding v. U.S.*, 48 Fed. Cl. 697, 723 (2001) (holding that the Rehabilitation Act did not afford a cause of action to naval academy midshipman who claimed he was discharged on the basis of a disability); *Doe v. Garrett*, 903 F.3d 1455, 1461-1462 (11th Cir. 1990) (naval employee released from service based on handicap has no cause of action under the Rehabilitation Act); *Coffman v. State of Michigan*, 120 F.3d 57, 59 (6th Cir. 1997) (stating that there exists no cause of action under the Rehabilitation Act by uniformed members of the armed services, and noting that courts have consistently "refused to extend statutory remedies available to civilians to uniformed members of the armed forces absent a clear direction from Congress to do so")². Accordingly, plaintiff has also failed to state a claim under the Rehabilitation Act. Plaintiff's complaint appears to appear to lack an arguable basis in law or fact, and is therefore subject to dismissal under § 1915(e).

CONCLUSION

ACCORDINGLY, for the reasons set forth above, plaintiff's complaint will be dismissed in thirty-five (35) days from the

² The *Coffman* court also cited *Chappell v. Wallace*, 462 U.S. 296 (1983), in which plaintiffs were prevented from bringing a *Bivens*-type claim for damages for racial discrimination in the context of military employment.

date of this Order unless plaintiff shows good cause, in writing, before that time, showing why it should not be dismissed.

SO ORDERED.

Dated at Boston, Massachusetts, this 18th day of August, 2004.

s/ Morris. E. Lasker
UNITED STATES DISTRICT JUDGE